

MILITARY SPOUSE INCOME TAX AMENDMENTS

2018 GENERAL SESSION

STATE OF UTAH

LONG TITLE

General Description:

This bill modifies the Individual Income Tax Act by amending provisions relating to individual income tax deductions for a military spouse.

Highlighted Provisions:

This bill:

- ▶ authorizes an individual income tax deduction from adjusted gross income for the amount of all income, including income apportioned to another state, of a nonmilitary spouse of an active duty military member in certain circumstances; and
- ▶ makes technical corrections.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides retrospective operation.

Utah Code Sections Affected:

AMENDS:

59-10-114, as last amended by Laws of Utah 2017, Chapter 389

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **59-10-114** is amended to read:

59-10-114. Additions to and subtractions from adjusted gross income of an individual.

(1) There shall be added to adjusted gross income of a resident or nonresident individual:

(a) a lump sum distribution that the taxpayer does not include in adjusted gross income on the taxpayer's federal individual income tax return for the taxable year;

(b) the amount of a child's income calculated under Subsection (4) that:

(i) a parent elects to report on the parent's federal individual income tax return for the

33 taxable year; and

34 (ii) the parent does not include in adjusted gross income on the parent's federal
35 individual income tax return for the taxable year;

36 (c) (i) a withdrawal from a medical care savings account and any penalty imposed for
37 the taxable year if:

38 (A) the resident or nonresident individual does not deduct the amounts on the resident
39 or nonresident individual's federal individual income tax return under Section 220, Internal
40 Revenue Code;

41 (B) the withdrawal is subject to Subsections 31A-32a-105(1) and (2); and

42 (C) the withdrawal is subtracted on, or used as the basis for claiming a tax credit on, a
43 return the resident or nonresident individual files under this chapter;

44 (ii) a disbursement required to be added to adjusted gross income in accordance with
45 Subsection 31A-32a-105(3); or

46 (iii) an amount required to be added to adjusted gross income in accordance with
47 Subsection 31A-32a-105(5)(c);

48 (d) the amount withdrawn under Title 53B, Chapter 8a, Utah Educational Savings Plan,
49 from the account of a resident or nonresident individual who is an account owner as defined in
50 Section 53B-8a-102, for the taxable year for which the amount is withdrawn, if that amount
51 withdrawn from the account of the resident or nonresident individual who is the account
52 owner:

53 (i) is not expended for:

54 (A) higher education costs as defined in Section 53B-8a-102.5; or

55 (B) a payment or distribution that qualifies as an exception to the additional tax for
56 distributions not used for educational expenses provided in Sections 529(c) and 530(d),
57 Internal Revenue Code; and

58 (ii) is:

59 (A) subtracted by the resident or nonresident individual:

60 (I) who is the account owner; and

61 (II) on the resident or nonresident individual's return filed under this chapter for a
62 taxable year beginning on or before December 31, 2007; or

63 (B) used as the basis for the resident or nonresident individual who is the account

64 owner to claim a tax credit under Section 59-10-1017;

65 (e) except as provided in Subsection (5), for bonds, notes, and other evidences of
66 indebtedness acquired on or after January 1, 2003, the interest from bonds, notes, and other
67 evidences of indebtedness issued by one or more of the following entities:

68 (i) a state other than this state;

69 (ii) the District of Columbia;

70 (iii) a political subdivision of a state other than this state; or

71 (iv) an agency or instrumentality of an entity described in Subsections (1)(e)(i) through
72 (iii);

73 (f) subject to Subsection (2)(c), any distribution received by a resident beneficiary of a
74 resident trust of income that was taxed at the trust level for federal tax purposes, but was
75 subtracted from state taxable income of the trust pursuant to Subsection 59-10-202(2)(b);

76 (g) any distribution received by a resident beneficiary of a nonresident trust of
77 undistributed distributable net income realized by the trust on or after January 1, 2004, if that
78 undistributed distributable net income was taxed at the trust level for federal tax purposes, but
79 was not taxed at the trust level by any state, with undistributed distributable net income
80 considered to be distributed from the most recently accumulated undistributed distributable net
81 income; and

82 (h) any adoption expense:

83 (i) for which a resident or nonresident individual receives reimbursement from another
84 person; and

85 (ii) to the extent to which the resident or nonresident individual subtracts that adoption
86 expense:

87 (A) on a return filed under this chapter for a taxable year beginning on or before
88 December 31, 2007; or

89 (B) from federal taxable income on a federal individual income tax return.

90 (2) There shall be subtracted from adjusted gross income of a resident or nonresident
91 individual:

92 (a) the difference between:

93 (i) the interest or a dividend on an obligation or security of the United States or an

94 authority, commission, instrumentality, or possession of the United States, to the extent that

95 interest or dividend is:

96 (A) included in adjusted gross income for federal income tax purposes for the taxable
97 year; and

98 (B) exempt from state income taxes under the laws of the United States; and

99 (ii) any interest on indebtedness incurred or continued to purchase or carry the
100 obligation or security described in Subsection (2)(a)(i);

101 (b) for taxable years beginning on or after January 1, 2000, if the conditions of
102 Subsection (3)(a) are met, the amount of income derived by a Ute tribal member:

103 (i) during a time period that the Ute tribal member resides on homesteaded land
104 diminished from the Uintah and Ouray Reservation; and

105 (ii) from a source within the Uintah and Ouray Reservation;

106 (c) an amount received by a resident or nonresident individual or distribution received
107 by a resident or nonresident beneficiary of a resident trust:

108 (i) if that amount or distribution constitutes a refund of taxes imposed by:

109 (A) a state; or

110 (B) the District of Columbia; and

111 (ii) to the extent that amount or distribution is included in adjusted gross income for
112 that taxable year on the federal individual income tax return of the resident or nonresident
113 individual or resident or nonresident beneficiary of a resident trust;

114 (d) the amount of a railroad retirement benefit:

115 (i) paid:

116 (A) in accordance with The Railroad Retirement Act of 1974, 45 U.S.C. Sec. 231 et
117 seq.;

118 (B) to a resident or nonresident individual; and

119 (C) for the taxable year; and

120 (ii) to the extent that railroad retirement benefit is included in adjusted gross income on
121 that resident or nonresident individual's federal individual income tax return for that taxable
122 year; ~~and~~

123 (e) an amount:

124 (i) received by an enrolled member of an American Indian tribe; and

125 (ii) to the extent that the state is not authorized or permitted to impose a tax under this

126 part on that amount in accordance with:

127 (A) federal law;

128 (B) a treaty; or

129 (C) a final decision issued by a court of competent jurisdiction[-]; and

130 (f) the amount of all income, including income apportioned to another state, of a

131 nonmilitary spouse of an active duty military member if:

132 (i) both the nonmilitary spouse and the active duty military member are nonresident

133 individuals;

134 (ii) the active duty military member is stationed in Utah;

135 (iii) the nonmilitary spouse is subject to the residency provisions of 50 U.S.C. Sec.

136 4001(a)(2); and

137 (iv) the income is included in adjusted gross income for federal income tax purposes

138 for the taxable year.

139 (3) (a) A subtraction for an amount described in Subsection (2)(b) is allowed only if:

140 (i) the taxpayer is a Ute tribal member; and

141 (ii) the governor and the Ute tribe execute and maintain an agreement meeting the

142 requirements of this Subsection (3).

143 (b) The agreement described in Subsection (3)(a):

144 (i) may not:

145 (A) authorize the state to impose a tax in addition to a tax imposed under this chapter;

146 (B) provide a subtraction under this section greater than or different from the

147 subtraction described in Subsection (2)(b); or

148 (C) affect the power of the state to establish rates of taxation; and

149 (ii) shall:

150 (A) provide for the implementation of the subtraction described in Subsection (2)(b);

151 (B) be in writing;

152 (C) be signed by:

153 (I) the governor; and

154 (II) the chair of the Business Committee of the Ute tribe;

155 (D) be conditioned on obtaining any approval required by federal law; and

156 (E) state the effective date of the agreement.

157 (c) (i) The governor shall report to the commission by no later than February 1 of each
158 year regarding whether or not an agreement meeting the requirements of this Subsection (3) is
159 in effect.

160 (ii) If an agreement meeting the requirements of this Subsection (3) is terminated, the
161 subtraction permitted under Subsection (2)(b) is not allowed for taxable years beginning on or
162 after the January 1 following the termination of the agreement.

163 (d) For purposes of Subsection (2)(b) and in accordance with Title 63G, Chapter 3,
164 Utah Administrative Rulemaking Act, the commission may make rules:

165 (i) for determining whether income is derived from a source within the Uintah and
166 Ouray Reservation; and

167 (ii) that are substantially similar to how adjusted gross income derived from Utah
168 sources is determined under Section 59-10-117.

169 (4) (a) For purposes of this Subsection (4), "Form 8814" means:

170 (i) the federal individual income tax Form 8814, Parents' Election To Report Child's
171 Interest and Dividends; or

172 (ii) (A) a form designated by the commission in accordance with Subsection
173 (4)(a)(ii)(B) as being substantially similar to 2000 Form 8814 if for purposes of federal
174 individual income taxes the information contained on 2000 Form 8814 is reported on a form
175 other than Form 8814; and

176 (B) for purposes of Subsection (4)(a)(ii)(A) and in accordance with Title 63G, Chapter
177 3, Utah Administrative Rulemaking Act, the commission may make rules designating a form as
178 being substantially similar to 2000 Form 8814 if for purposes of federal individual income
179 taxes the information contained on 2000 Form 8814 is reported on a form other than Form
180 8814.

181 (b) The amount of a child's income added to adjusted gross income under Subsection
182 (1)(b) is equal to the difference between:

183 (i) the lesser of:

184 (A) the base amount specified on Form 8814; and

185 (B) the sum of the following reported on Form 8814:

186 (I) the child's taxable interest;

187 (II) the child's ordinary dividends; and

188 (III) the child's capital gain distributions; and
189 (ii) the amount not taxed that is specified on Form 8814.
190 (5) Notwithstanding Subsection (1)(e), interest from bonds, notes, and other evidences
191 of indebtedness issued by an entity described in Subsections (1)(e)(i) through (iv) may not be
192 added to adjusted gross income of a resident or nonresident individual if, as annually
193 determined by the commission:
194 (a) for an entity described in Subsection (1)(e)(i) or (ii), the entity and all of the
195 political subdivisions, agencies, or instrumentalities of the entity do not impose a tax based on
196 income on any part of the bonds, notes, and other evidences of indebtedness of this state; or
197 (b) for an entity described in Subsection (1)(e)(iii) or (iv), the following do not impose
198 a tax based on income on any part of the bonds, notes, and other evidences of indebtedness of
199 this state:
200 (i) the entity; or
201 (ii) (A) the state in which the entity is located; or
202 (B) the District of Columbia, if the entity is located within the District of Columbia.
203 **Section 2. Retrospective operation.**
204 This bill has retrospective operation for a taxable year beginning on or after January 1,
205 2018.